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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

MAR 4 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In re Applications of	)	MM Docket No. 93-87
	)	
RAYMOND W. CLANTON	)	File No. BPH-911216MC
	)	
LOREN F. SELZNICK	)	File No. BPH-911216MD
	)	
For Construction Permit	)	
for a new FM Station on	)	
Channel 279A in El Rio,	)	
California	)	

To: Administrative Law Judge  
John M. Frysiak

LIMITED PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

On behalf of

RAYMOND W. CLANTON

March 4, 1994

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## SUMMARY

Proposed findings and conclusions, limited to the three basic issues against Selznick, are submitted. Selznick is found unqualified on all counts.

She was not financially qualified when she originally filed her application for her cost estimate was deficient. She neglected FCC fees and the cost of moving to California, and did not consider sales tax and freight on her equipment. She would have not had enough money even if the funds she certified as available were actually available.

She had no reasonable assurance of funds from Dailey, her sole financing source. There was no writing and no discussion of the amount of the loan or its terms. Dailey did not provide his written financial statement and net income. His conversation about his finances omitted any disclosure of his liabilities. Each of this failings, by itself, negates financial qualification.

Selznick was aware that her certification was improper when it was made. She is a practicing attorney, and has managerial experience at a broadcast station. She retained communications counsel to assist her in preparing the application, but has refused to make his advice available to the Commission. She failed to consult Commission decisions or policy statements. She relied solely on the instructions to Form 301, but did not follow those. These facts show that her financial certification was made with gross disregard for

Commission requirements at best, or with knowledge that it was false. In either event it was a misrepresentation.

Selznick is not currently financially qualified. Her amendment seeking to reduce her cost estimate has not been accepted, and her claimed funds of \$140,070 are substantially short of the amount needed, \$360,070. Even if her amendment were to be accepted, Selznick is not financially qualified. Her cost estimate fails to recognize a number of items, e.g. the correct antenna, studio rent, moving and living expenses, etc., raising the cost significantly.

Selznick may not rely upon the proposed \$40,000 loan from Dailey. His current financial statement is not in evidence, and there is no mention of what he will require as collateral.

Selznick relies upon her own assets for \$100,070. Included is \$30,000 as proceeds from the sale of two cooperative apartments, which were appraised at a total of \$204,000. Commission policy reduces the sales price by 1/3, or by \$68,000 to \$136,000. This is less than the existing mortgages. Selznick has also underestimated the taxes due on the closing of her retirement account, as she did not take into account New York State and City taxes. The total funds available to Selznick are insufficient to meet even her reduced construction and operation budget.

Selznick's application must be denied. Clanton, who is the sole remaining applicant for this facility, must receive the construction permit.

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LIMITED PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Raymond Clanton, by his attorney, respectfully files these proposed findings of fact and conclusions of law as to the basic qualifying issues in the above-captioned proceeding. In view of the Commission's Public Notice of February 25, 1994, FCC 94-41, staying all comparative hearing matters, the standard comparative issue will not be addressed at this time.

I. Preliminary Statement

2. By Hearing Designation Order (El Rio, California), 8 FCC Rcd 2624 (Mass Med. Bur. 1993) ("HDO"), the Commission designated for hearing the mutually exclusive applications of Raymond W. Clanton and Loren F. Selznick for a construction permit for a new FM station on Channel 279A in El Rio, California, on the standard comparative issues.

3. By Memorandum Opinion and Order, FCC 93M-625,

released September 30, 1993, the Presiding Judge added the following issues against Selznick:

(I) To determine whether Selznick falsely certified in her application that she was financially qualified, and if so, the effect thereon on her qualifications to become a Commission licensee;

(II) To determine whether Selznick misrepresented facts or lacked candor in certifying that she was financially qualified in her original application and if so, the effect thereon on her qualifications to become a Commission licensee;

(III) To determine whether Selznick is financially qualified to construct her station and operate it for three months without revenue, and if not, the effect thereon on her qualifications to become a Commission licensee.

4. Both the burden of going forward and the burden of proof on these issues were placed on Selznick.

5. In adding the first issue, the Presiding Judge noted that under Commission policy Selznick had to have in hand documentation of available funding at the time she filed her application, and it appeared that she did not. He added the second issue, finding that as a practicing attorney in New York who was represented by experienced communications counsel, she is not a naive applicant. He based the third issue on his denial of Selznick's petition to amend her financial showing, filed August 30, 1993. See FCC-93M-583, released September 13, 1993. As a result, her estimated cost of \$360,070 to construct and operate the station for three months without revenue remains unchanged. In her August 30 amendment, Selznick professed no more than \$125,958 was available to her for the construction and operation of her

station.

6. An evidentiary hearing session on the issues added against Selznick was held January 12, 1994. Ms. Selznick was the sole witness to testify in person, although excerpts from the deposition of Joseph P. Dailey were admitted into evidence. The record was closed January 12, 1994. See FCC 94M-28, released January 18, 1994.

## II. Findings of Fact

### A. Selznick's initial financial qualifications.

7. Selznick worked as an attorney for the law firm of Breed, Abbott & Morgan in New York, since 1987. She has primarily been under the tutelage of Joseph P. Dailey, ("Dailey") a former partner in the firm. They became personal friends as well as co-workers. Dailey left the firm in mid-1991, but continued to work with Selznick on matters handled by the firm. (Selznick Ex. 4)

8. In the late summer of 1991, after returning to New York from a trip to California in which she unsuccessfully looked for radio stations to purchase, Selznick became aware of the opportunity to apply for the El Rio channel. She spoke with Dailey, among others, about the advisability of applying for the radio station. Dailey thought it was a great idea. (Selznick Ex. 4)

9. In proceeding toward preparation of the application, Selznick developed a construction and operating budget for her proposed station. She consulted with Dean Heinen, an engi-

neer, who provided estimated costs of equipment and its installation. Selznick's cost estimate for construction and first three months operation was \$360,070. (Selznick Ex. 4)

10. Selznick is unable to state whether Heinen's estimates included shipping and sales taxes. She was unaware of the sales tax rate in California when she filed her application. Selznick acknowledged at hearing that the instructions to Form 301 call for inclusion of these items in the applicant's cost budget. Selznick does not recall reading the instruction which addresses that point. (TR 89)

11. Although Selznick knew that there would be a competing applicant, her estimate omitted the Commission's \$6,760 hearing fee. She also failed to account for the fees to file the application for license (\$115) and the STL application (\$85). (TR 90-91)

12. Selznick proposes to move from New York to California to oversee the entire construction of the station and to operate it thereafter. (Selznick Ex. 2) Her budget estimate omitted the cost of this move across the country as well as her living expenses in California during the period of construction and three months operation. She does not plan to pay herself a salary during the first three months of station operation. (TR 104)

13. Needing financing to cover her estimated costs, Selznick contacted Derrick Cephas, a former attorney at her law firm, who was part of a group which owned and operated



radio stations. Cephas indicated to Selznick that his group was interested in providing the financing. However, Selznick had not reached an arrangement with the Cephas group for the financing by November 1991, shortly before the filing deadline. She mentioned her lack of a financial commitment to Dailey, telling him that her estimate of the station's construction and start up costs was slightly more than \$350,000. (Selznick Ex. 4) Dailey's recollection is that Selznick stated that the station would be built from scratch for no more than \$350,000.

14. Dailey was not clear on whether this figure included working capital. While he believed that it "must have", he did not know what the working capital component was. (Selznick Ex. 4, Appendix B, p. 81; Clanton Ex. 2, p. 43-44)

15. Dailey said that he would personally provide the financing, if needed. (Selznick Ex. 4) This particular conversation went no further for Selznick was concentrating on obtaining financing from the Cephas group. (Selznick Ex. 4, Appendix B, p. 58)

16. The date for filing the application approached, but Selznick remained without a financial commitment from the Cephas group. Selznick called Dailey to ask whether he was serious about providing the financing. Dailey said he was. He did not, however, state a specific dollar figure. (TR 86; Clanton Ex. 2, p. 46-7; Selznick Ex. 4, Appendix B, p. 57, 82) He said merely that he would provide the financing. (Clanton

Ex. 2, p. 84)

17. Dailey did not mention the terms under which he would provide the funds. Items such as interest rate, repayment arrangement, or security and collateral were never discussed. (Selznick Ex. 4, Appendix B, p. 58) The first time Dailey mentioned either the dollar amount of his loan or its terms was in 1993. (Clanton Ex. 2, p. 90)<sup>1</sup>

18. The record does not show that Dailey researched the El Rio market, that he knew its demographics, or that he had any knowledge of the market whatsoever when he told Selznick he was willing to provide the financing or at any time thereafter. There is nothing to show that Selznick gave him any written information on this market prior to filing her application, or that she provided Dailey with an estimate of station revenues or an estimate of the value of an operating station in the area.

19. There is no showing that Dailey saw letters regarding site assurance, Selznick's balance sheet, financial statement, or bank statements. He has not seen an appraisal on either apartment owned by Selznick. (Clanton Ex. 2, p. 31) There is no evidence that they discussed Selznick's financial situation in 1991.

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<sup>1</sup> Selznick asserts, without providing a basis therefor, that the terms of the loan were understood. (Selznick Ex. 4) Dailey's terms would be the reasonable commercial terms for a loan of this type, such as what a bank might charge. (Clanton Ex. 2, p. 89)

20. Selznick told Dailey roughly how her budget figure was broken down, and may have shown her a list of equipment and prices. (Clanton Ex. 2, p. 31, 43-4) His recollection is that she said her total cost was \$350,000. (Clanton Ex. 2, p. 58, 74, 84)

21. Before filing her application, Selznick read the instructions to FCC Form 301 to determine the Commission's requirements for completing Section III, the financial qualifications section, including the sentence which stated that in certifying she can and will meet all requirements as to collateral, guarantees, etc. (TR 80) She also discussed the Commission's financial standards with her then counsel, Peter Tannenwald. (Selznick Ex. 4) Selznick has refused to divulge the contents of communications between her counsel and herself, asserting the attorney-client privilege. (TR 94) There is no showing that Selznick read any Commission reports or decisions addressing financial qualifications for broadcast applicants.

22. Selznick did not obtain written documentation regarding Dailey's proposal to provide financing, nor did she ask Dailey for any such document. (Clanton Ex. 2, p. 52, 54-55)

23. In August 1993, Selznick prepared and asked Dailey to sign a declaration in which he was to say she requested \$360,000 from him in 1991. Dailey was not sure that is the

number they were talking about in 1991.<sup>2</sup> At the time Selznick mentioned her cost estimate in 1991, they had not talked about Dailey providing financing because she was still trying to get funding from the Cephas group. (Selznick Ex. 4, Appendix B, p. 58) As noted above, Dailey's recollection of the figure quoted was \$350,000.

24. When he told Selznick he would provide the financing, Dailey had in mind being an advisor to Selznick with regard to the station. If she formed a corporation, he would probably want to be on the board of directors. Dailey advised Selznick to hire someone with a lot of experience to help her with the operation of the station and to give that person equity in the licensee. (Clanton Ex. 2, p. 77) He suggested that Selznick consider his brother-in-law, who has broadcast experience, as a possible employee. (Clanton Ex. 2, p. 76) Selznick responded enthusiastically to this suggestion, according to Dailey. (Clanton Ex. 2, p. 76) Selznick denied that Dailey ever suggested that she hire someone with radio experience, although she conceded that he mentioned his brother-in-law, who has experience in radio, as a possible employee. (TR 130-131)

25. Selznick was aware of the need to have assurance that Dailey possessed "the liquid assets to finance the investment". (Clanton Ex. 2, p. 47) She did not have his balance

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<sup>2</sup> Dailey had virtually no input into the drafting of his statement. He gave the draft only a very cursory review before signing it. (Clanton Ex. 2, p. 78, 80)

sheet on her computer. (Clanton Ex. 2, p. 53) Selznick stated in an affidavit of September 15, 1993, that in November 1991 she had Dailey's financial statement available to her on a computer system that they shared at Breed Abbott & Morgan. (TR 84) She did not, however, access Dailey's computer for the purpose of reviewing his financial statement. (TR 85) As noted above, Dailey was no longer a partner at the law firm in November 1991. (Clanton Ex. 2, p. 34)

26. Selznick read the Commission's Form 301 instructions as requiring the applicant to confirm that the lender's "net liquid assets" were sufficient to enable him to make the loan. Selznick asked Dailey about his capability to make the loan during a telephone conversation around the third week of November 1991 (Clanton Ex. 2, p. 47); Dailey was in California and Selznick was in New York. Dailey stored his financial statement on his own computer and updated it monthly. (Clanton Ex. 2, p. 92) He brought up his most recent statement on the computer's screen during this phone conversation. It is not known what data appeared on Dailey's computer screen; at the hearing, Selznick could not recall the specific numbers Dailey read. (TR 100)

27. Neither Dailey nor Selznick were aware of the Commission's definition of "net liquid assets".<sup>3</sup> Dailey focussed on gross liquid assets, i.e. those assets which are considered

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<sup>3</sup> There is nothing in the record to indicate that Selznick raised this matter with her communications counsel.

liquid, without regard for offsetting liabilities. He asked Selznick, "Well, what does the Commission mean by liquid assets?" (Clanton Ex. 2, p. 52) He started to read from his computer screen those items which he believed would qualify as a liquid asset. Dailey decided that his cash, partnership profits, and partnership inventory interest<sup>4</sup> would be liquid assets. He stopped reading at that point, for the gross total was over \$500,000, more than Selznick had said she would require. (Clanton Ex. 2, p. 53) Dailey did not mention anything about his liabilities to Selznick; the sole source of Selznick's knowledge about Dailey's liabilities is his financial statement, which she first saw in August 1993. (Clanton Ex. 2, p. 33, 92)

28. This telephone conversation was the only conversation Selznick had with Dailey about his financial ability to make a loan before she filed her application.

29. The record contains Dailey's financial statement as of November 30, 1991. This was prepared in early December 1991. (Clanton Ex. 2, p. 92).

30. Dailey's reconstructed November 30, 1991, financial statement states as follows:

Assets

Peralta Hills Home (Appraised Value)	. \$1,600,000
Cash . . . . .	\$218,000
Partnership Profits . . . . .	\$230,864
Salary Receivable . . . . .	\$50,000

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<sup>4</sup> The partnership inventory interest was being paid at the rate of \$2,770 per month. (Clanton Ex. 2, p. 103)

Partnership Inventory Interest . . . . .	\$150,368
RunTime Technologies Investment At Cost .	\$420,000
Personal Property . . . . .	\$250,000
Automobiles . . . . .	<u>\$20,000</u>

Total . . . . .	\$2,939,232
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Liabilities

Mortgage Debt . . . . .	\$975,000
Bank Loans . . . . .	\$44,970
Notes Payable . . . . .	\$0
Income Taxes Payable . . . . .	\$0
Charge Accounts Payable. . . . .	<u>\$0</u>

Total	\$1,019,970
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(Selznick Ex. 4, Appendix A)

31. Dailey did not have his home appraised until September 1992. (Clanton Ex. 2, p. 96) He conceded that he did not know the appraised value of his home on November 30, 1991. (Clanton Ex. 2, p. 97).

32. The Form 301 instructions state that an applicant's budget must estimate the cost of items "in place and ready for operation." Selznick was not sure she read that portion of the instructions. She read the portion of the instructions which address an applicant who intends to obtain financing from an individual. That paragraph states that the applicant must have "on hand" a document giving the individual's financial statement and his net income received after federal income taxes for the previous two years. Selznick interpreted "on hand" to mean that she did not have to have such a document in her possession, but that she could get it easily if needed. There is no showing that she checked her interpretation with her counsel.

33. Selznick did not obtain Dailey's income after taxes for any year prior to filing her application. This sum was not discussed until the summer of 1993. (Clanton Ex. 2, p. 109-110)

34. Selznick certified that "sufficient liquid assets are on hand or that funds are available from committed sources to construct and operate the requested facility for three months without revenue" in her application, filed December 16, 1991. She indicated that the total estimated cost was \$360,070, the same figure developed in her budget.

35. In response to Question 3 of Section III of Form 301, Selznick stated that Joseph P. Dailey would lend her \$361,000. She specified no other source of financing.

B. Selznick's misrepresentations.

36. Most of the relevant facts under this issue were presented under Issue I. They are summarized here for convenience.

37. Selznick is a practicing attorney. She worked in radio between 1979 and 1983, including the positions of president and general manager for 1982-1983. (Selznick Ex. 2) She retained experienced communications counsel to assist her in filing her application. (Selznick Ex. 4)

38. Prior to completing the FCC application form, Selznick asserts that she consulted the instructions to Section III. (TR 80) She may not have read the portion dealing with equipment cost estimates, and could not state



that her estimate included costs for transportation and sales taxes. (TR 89) She testified that she read the portion of the instructions which requires an applicant to have documentary financial information from a non-institutional lender "on hand" at the time the application is filed. She had nothing in writing in her possession, for she obtained no documents relevant to Dailey's financial position. (Clanton Ex. 2, p. 52, 54-55) The record is silent on whether Selznick even asked her communications attorney for confirmation of her interpretation of "on hand" as "readily available", or whether she received his counsel but ignored it. She obtained no information whether in writing or orally on Dailey's liabilities, nor on his net income after taxes for the previous two years. (Clanton Ex. 2, p. 109-110)

39. Selznick acknowledges having read the portion of the instructions which state that in certifying its financial qualifications, the applicant certifies that it can and will meet all requirements for collateral and guarantees. However, Selznick failed to discuss any of the terms, including the gross amount of funds to be provided and the collateral or guarantee requirements. While Dailey stated that he would provide Selznick with her financing, the only figure Selznick had provided was \$350,000. (Clanton Ex. 2, p. 84)

40. Selznick provided Dailey with no information about the El Rio Market, or about her personal financial situation. She had no basis to believe that Dailey had detailed infor-

mation on either topic.

41. Selznick inserted the figure of \$361,000 into the application form as the amount of funds available from Dailey without him ever mentioning that figure, or any other figure. Selznick never confirmed that figure, or any specific dollar amount, with Dailey. (Clanton Ex. 2, p. 90)

42. Selznick's expressed cost estimate of \$360,070 was the same number she developed in her written budget. Selznick knew there would be a competing applicant, and that the Commission charged a hearing fee of \$6,760. Selznick did not account for the hearing fee expense in her budget. (TR 90)

43. Selznick did not mention the instructions to the application form in her opposition to Clanton's petition to enlarge issues. (TR 78)

C. Selznick's current financial qualifications.

44. Selznick's first petition to modify her financial plan and reduce the amount of money necessary to construct and operate her station for three months without revenues was rejected. Memorandum Opinion and Order, FCC 93M-583, released September 13, 1993. No action has been taken on her second petition to amend her financial plan, filed January 6, 1994. As a result, \$360,070 remains the estimated cost of construction and initial operation for Commission purposes. Selznick claims only \$140,700 in available funds. (Selznick Ex. 5)

45. Selznick recently revised her budget, based upon advice from, inter alia, Miller & Associates, a California

radio consulting firm. Selznick now contemplates a satellite-delivered music service, augmented by live local news.<sup>5</sup> (Selznick Ex. 5) Admission of the new budget into evidence was conditioned on acceptance of her amendment of January 6, 1994. Her revised budget is shown below:

A. Construction Costs

1.	65' pole	\$4,500
2.	Transmitter building	5,200
3.	Transmitter	5,500
4.	Exciter	2,595
5.	Antenna plus 200 feet of transmission line, connectors adaptor etc.	3,105
6.	Remote control & EBS unit	2,060
7.	Modulation monitor	2,200
8.	STL-8 Marti plus two Scala antennae	3,900
9.	Stereo generation/processing with Innovonics stereo generator	1,100
10.	Satellite dish and receiver	3,000
11.	Production control equipment and satellite interface equipment	10,000
12.	Miscellaneous studio equipment and general office supplies	5,000
13.	Studio furniture and fixtures	10,000
14.	Power generator	4,000
15.	Miscellaneous labor and installation	5,000
16.	Miscellaneous taxes, shipping, etc.	10,000

TOTAL CONSTRUCTION COSTS.....\$ 79,460

B. First Three Months' Operating Costs.....\$ 30,000

(assumes no salary for Selznick, use of contract engineer (\$125/month), \$575 monthly music service and fees, \$1,200/month salary for newsman/production person, \$1,000/month for receptionist/traffic/bookkeeper, \$1,500/month salary (plus commissions) for salesperson, \$125/week salary for 2 parttime employees, 1,750/month for phone/utilities,

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<sup>5</sup> Selznick discussed her revised cost estimate with a number of brokers and broadcasters. While some agreed that a station could be put on the air for around \$100,000, Eliot Evers told her that she would be "hard pressed" to spend that small amount. He said he usually used \$300,000. (TR 107)

\$1,000 monthly tower site rental, and \$1850  
for taxes, legal, fees & other miscellaneous)

TOTAL ESTIMATED COSTS.....\$ 109,460

(Selznick Ex. 4, Appendix C)

46. The "other miscellaneous" figure was meant to cover anything Selznick may have forgotten. It was arbitrary. (TR 111)

47. Selznick's revised budget differs in significant ways from her original budget and from her application. Her budget includes the cost of a Hall Electronics antenna, whereas her application specifies a Jampro antenna. (TR 114) Selznick's estimated cost for the Hall antenna, including transmission line, connectors, adaptors, etc, is \$3,105. The cost of the antenna alone was estimated by Brett Miller at \$1,875. (Clanton Ex. 3, TR 119) According to Selznick's consulting engineer, the Jampro antenna alone cost \$3,900 in 1991. (TR 118)

48. Selznick's budget proposes a mixture of new and used equipment, but Selznick was not sure which of the equipment in her budget is new and which is used. (TR 134) She relies primarily upon an August 1993 Miller & Associates letter for the equipment costs, including the costs of used equipment. However, as of the date of the hearing, she had not verified that the proposed used equipment was available. (TR 135)

49. Selznick's budget does not provide for the cost of studio rent. She assumed that she would not have to pay studio rent for the first six months of its use, based upon

the following language contained in a letter of August 26, 1993, from Miller & Associates:

The rental situation in Ventura County is such that rates are the lowest they have been in a long time and you can also look for tenant improvements to be included in the rent base, plus in some cases, up to six months of free rent while the improvements are being made, and while you are completing your installation of office/studio equipment.

(Clanton Ex. 3, TR 110-111, 128)

50. Selznick has not spoken directly to realtors or potential landlords about studio space in the El Rio area. She did not know if Brett Miller had spoken to specific landlords. (TR 108)

51. Selznick proposes to take no salary during the first three months of station operation. There is nothing in the record to demonstrate how she will pay her personal living expenses during that period, as she proposes to use all her liquid assets, and liquidate nearly all her other assets, to pay for the construction and initial station operation. She continues to omit the cost of her move to California.

52. Selznick estimated the use of a contract engineer at \$125 per month. The estimate given by Miller & Associates is \$350 per month. (TR 111, Clanton Ex. 3) Selznick's counsel advised her of the lower number. (TR 113) There is nothing in the record to show the basis for Selznick's counsel's estimate.

53. Selznick proposes to pay a newsman/production person \$1,200 per month. The Miller & Associates estimate for a

person who would handle announcing and production, without news duties, was \$1500 per month. (TR 124) Selznick proposes to operate with two part time employees, each working 25 hours per week at a salary of \$125 per week. (TR 124) When asked how the station will operate its proposed 24 hours a day with the staff for which she budgeted, she stated she had not worked it out. (TR 125) Selznick was clearly confused as to whether her staffing was sufficient for her planned operation. At first she had the receptionist working Monday-Friday. (TR 125) Then she had this employee working on Saturday, but taking one weekday off. Selznick first stated that the salesman would not have any responsibility for station operation. (TR 125) Later she had this employee operating the station on Sundays from 2-6 pm and one weekday when the receptionist was off. (TR 155)

54. In her 1991 budget, Selznick estimated a cost of \$1,625 for three months use of a news wire. (TR 122) She made no provision for a news wire in her 1993 budget. Selznick did not propose to drop the news wire. She testified she had not focussed on this item in preparing her revised budget. (TR 122)

55. Selznick's 1991 budget proposed purchasing an air conditioner for the transmitter building at a cost of \$1,000. Selznick's current budget omits this item, although she concedes that it gets hot in the El Rio area in the summer. (TR 121) Selznick provides no explanation for the omission of

the air conditioner from the list.

56. Selznick plans to promote her station during the first three months of its operation. She made no provision for the cost of any promotions. She testified that she was familiar with an existing station which was able to do promotions at no cost, e.g. via trade with local newspapers. Selznick conceded that she has no experience in promoting brand new stations. (TR 123)

57. Selznick estimated three months of payments for her transmitter site. She would have to have access to the site for some period of time before going on the air to install and test the transmitter and antenna. She could not state the period of time this would take. (TR 129) She did not know whether she could have access to her transmitter site before going on the air without cost, or whether she would have to pay rent for some period of time before going on the air. (TR 128)

58. Selznick estimates she now has \$140,700 available to construct and operate the El Rio Station for three months without revenue. Dailey is to provide \$40,000, and she will provide the remainder of \$100,700 from her personal assets. (Selznick Ex. 5)

59. Selznick's present financial statement shows the following:

**Assets**

Cash on Hand	\$ 40,000
Retirement Accounts	25,000

Inheritance Receivable	8,000
99 Bank Street Apartment 3L Cooperative Stock	86,000
67 East 11th Street Apartment 401 Cooperative Stock	<u>118,000</u>

Total . . . . . \$ 277,000

**Liabilities**

Mortgage Debt	64,000
Mortgage Debt	110,000
Bank Loans/Notes Payable	0
Credit Cards Payable	1,100
Payable - Other	<u>1,200</u>

Total . . . . . \$ 176,300

Net Liquid Assets . . . . . \$ **100,700**

(Selznick Ex. 4, Appendix D)

60. The valuation of her apartments comes from appraisals made in August 1993. Copies of the appraisals were submitted as part of Selznick's direct case evidence, Selznick Ex. 5, Appendices E and F. The appraiser did not testify. The appraisals indicate, at the bottom across from the date, that the appraiser did not physically inspect either property. Selznick testified that the appraiser visited both apartments. (TR 49)

61. Selznick proposes to sell her apartments without use of a broker, and to handle the closings herself. Her basis in the apartments is such that there will be no taxable gain, and no capital gains taxes will be due on their sale. (Selznick Ex. 5)

62. The record does not contain Dailey's current financial statement, nor any current information from which his financial ability to make even a \$40,000 loan may be



ascertained. (Dailey testified only with respect to changes since preparing his August 27, 1993, statement, Clanton Ex. 2, p. 109, but that statement is absent from the hearing record.) It contains no loan commitment letter for the proposed \$40,000 loan from Dailey. Selznick asserts that Dailey's deposition testimony, Selznick Ex. 4, Appendix B, and his declaration of August 27, 1993, which is not in evidence, constitute his written loan commitment. In neither of these documents is there a mention of collateral. Selznick claims that the collateral was understood. (TR 129) She gives no basis for this "understanding".

### III. Conclusions of Law

63. As Selznick has the burden of proof on all three issues, She may be found fully qualified only if the preponderance of the evidence on each issue is in her favor. Evidentiary gaps must be resolved against her.

#### A. Selznick's initial financial qualifications.

64. Under this issue, Selznick must demonstrate that she met the Commission's requirements for financial qualifications at the time she filed her application in December 1991. The evidence in the record must show (1) that Selznick's budget included all reasonably anticipated expenses, and (2) that she had reasonable assurance of sufficient funds to meet these expenses.

65. Selznick's estimate to construct and operate her station for three months was \$360,070. The record does not